

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

_____	)	
IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MDL No. 1456
LITIGATION	)	Civil Action No. 01-12257-PBS
_____	)	Subcategory Case No. 03-10643
	)	
THIS DOCUMENT RELATES TO:	)	Judge Patti B. Saris
	)	
<i>The City of New York v. Abbott Labs., et al.</i>	)	Magistrate Judge Marianne B. Bowler
(S.D.N.Y. No. 04-CV-06054)	)	
	)	
<i>County of Nassau v. Abbott Labs., et al.</i>	)	
(E.D.N.Y. No. 04-CV-05126)	)	
	)	
and other cases listed on the following page	)	
_____	)	

**DECLARATION OF ROBERT B. FUNKHOUSER**

THIS DOCUMENT RELATES TO:	)	<i>County of Herkimer v. Abbott Labs., et al.</i>	)
<i>County of Westchester v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00415)	)
(S.D.N.Y. No. 03-CV-6178)	)	<i>County of Oneida v. Abbott Labs., et al.</i>	)
<i>County of Rockland v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00489)	)
(S.D.N.Y. No. 03-CV-7055)	)	<i>County of Fulton v. Abbott Labs., et al.</i>	)
<i>County of Putnam v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00519)	)
(S.D.N.Y. No. 05-CV-04740)	)	<i>County of St. Lawrence v. Abbott Labs., et al.</i>	)
<i>County of Dutchess v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00479)	)
(S.D.N.Y. No. 05-CV-06458)	)	<i>County of Jefferson v. Abbott Labs., et al.</i>	)
<i>County of Orange v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00715)	)
(S.D.N.Y. Case No. 07-CV-2777)	)	<i>County of Lewis v. Abbott Labs., et al.</i>	)
<i>County of Washington v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00839)	)
(N.D.N.Y. No. 05-CV-00408)	)	<i>County of Chautauqua v. Abbott Labs., et al.</i>	)
<i>County of Rensselaer v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06204)	)
(N.D.N.Y. No. 05-CV-00422)	)	<i>County of Allegany v. Abbott Labs., et al.</i>	)
<i>County of Albany v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06231)	)
(N.D.N.Y. No. 05-CV-00425)	)	<i>County of Cattaraugus v. Abbott Labs., et al.</i>	)
<i>County of Warren v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06242)	)
(N.D.N.Y. No. 05-CV-00468)	)	<i>County of Genesee v. Abbott Labs., et al.</i>	)
<i>County of Greene v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06206)	)
(N.D.N.Y. No. 05-CV-00474)	)	<i>County of Wayne v. Abbott Labs., et al.</i>	)
<i>County of Saratoga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06138)	)
(N.D.N.Y. No. 05-CV-00478)	)	<i>County of Monroe v. Abbott Labs., et al.</i>	)
<i>County of Columbia v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06148)	)
(N.D.N.Y. No. 05-CV-00867)	)	<i>County of Yates v. Abbott Labs., et al.</i>	)
<i>Essex County v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06172)	)
(N.D.N.Y. No. 05-CV-00878)	)	<i>County of Niagara v. Abbott Labs., et al.</i>	)
<i>County of Chenango v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06296)	)
(N.D.N.Y. No. 05-CV-00354)	)	<i>County of Seneca v. Abbott Labs., et al.</i>	)
<i>County of Broome v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06370)	)
(N.D.N.Y. No. 05-CV-00456)	)	<i>County of Orleans v. Abbott Labs., et al.</i>	)
<i>County of Onondaga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06371)	)
(N.D.N.Y. No. 05-CV-00088)	)	<i>County of Ontario v. Abbott Labs., et al.</i>	)
<i>County of Tompkins v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06373)	)
(N.D.N.Y. No. 05-CV-00397)	)	<i>County of Schuyler v. Abbott Labs., et al.</i>	)
<i>County of Cayuga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06387)	)
(N.D.N.Y. No. 05-CV-00423)	)	<i>County of Chemung v. Abbott Labs., et al.</i>	)
<i>County of Madison v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06744)	)
(N.D.N.Y. No. 05-CV-00714)	)	<i>County of Steuben v. Abbott Labs., et al.</i>	)
<i>County of Cortland v. Abbott Labs., et al.</i>	)	(W.D.N.Y. Case No. 05-CV-6223)	)
(N.D.N.Y. No. 05-CV-00881)	)	<i>County of Wyoming v. Abbott Labs., et al.</i>	)
<i>County of Ulster v. Abbott Labs., et al.</i>	)	(W.D.N.Y. Case No. 05-CV-6379)	)
(N.D.N.Y. Case No. 06-CV-0123)	)		

I, Robert B. Funkhouser, duly declare under penalty of perjury as follows:

1. I am litigation counsel of the law firm of Hughes, Hubbard & Reed LLP, which represents Defendant Merck & Co., Inc. in this matter and have been admitted *pro hac vice*.

2. I am familiar with all of the facts and circumstances herein. I submit this affidavit in support of Defendant Merck & Co., Inc.'s Opposition to Plaintiffs' Motion to Compel to provide the Court with the evidence cited in Merck's Opposition.

3. Attached hereto as Exhibit 1 is a true and correct copy of the excerpts from the transcript of the July 26, 2007 hearing on Defendants' Motion to Dismiss the First Amended Consolidated Complaint in the above captioned case.

4. Attached hereto as Exhibit 2 is a true and correct copy of my letter dated October 12, 2007 to Joanne Cicala.

5. Attached hereto as Exhibit 3 is a true and correct copy of the letter dated October 18, 2007 from Joanne Cicala to me.

6. Attached hereto as Exhibit 4 is a true and correct copy of the letter dated July 29, 2009 from Joanne Cicala to me.

7. Attached hereto as Exhibit 5 is a true and correct copy of my letter dated August 4, 2009 to Joanne Cicala.

8. Attached hereto as Exhibit 6 is a chart of NDCs in Exhibit A to the Declaration of Harris L. Devor in support of the Plaintiffs' Motion to Compel Discovery from Merck indicating as to each whether it is listed on (1) Plaintiffs' Exhibit B-24: Merck NDCs at Issue With Spreads of 30% and Above, or (2) Plaintiffs' Exhibit B-24: Merck NDCs at Issue Between 25% and 30% or (3) Not on Exhibit B-24.

9. Attached hereto as Exhibit 7 is a true and correct copy of the May 2006 Office of the Inspector General Report: *Determining Average Manufacturer Prices for Prescription Drugs Under the Deficit Reduction Act of 2005*.

10. Attached hereto as Exhibit 8 is a true and correct copy of the Affidavit of Eric M. Gaier, Ph.D.

I hereby swear that the foregoing statements are true to the best of my knowledge, information, and belief.

/s/ Robert B. Funkhouser  
Robert B. Funkhouser

Dated: October 5, 2009

HUGHES HUBBARD & REED LLP  
1775 I Street, N.W.  
Washington, DC 20006  
Tel: 202-721-4600  
Fax: 202-721-4646  
funkhous@hugheshubbard.com

*Attorney for Defendant Merck & Co., Inc.*

## **CERTIFICATE OF SERVICE**

I certify that, on October 5, 2009, I caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending a copy to Lexis-Nexis for posting and notification to all parties.

/s/ Robert B. Funkhouser  
Robert B. Funkhouser